

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MANORCARE OF ALLENTOWN PA, LLC D/B/A
MANORCARE HEALTH SERVICES--
ALLENTOWN

Employer

and

Case 06-RC-186558

RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION, RWDSU, UNITED FOOD AND
COMMERCIAL WORKERS, AFL-CIO

Petitioner

ORDER

The Employer's request for review of the Regional Director's Supplemental Decision and Second Supplemental Decision on Objections and Certification of Representative is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we agree with the Regional Director that the Employer's arguments related to the processing of the petition by Region 4 in Case 04-RC-159640 are not relevant to this case. Region 4 had no involvement with the petition filed in Region 6, and its involvement in Case 04-RC-159640 ended with the General Counsel's Order, issued on April 22, 2016, which transferred the case to Region 6 for *de novo* review of the Employer's objections.

We also reject the Employer's contention that the petition must be dismissed because it was originally filed in Region 6. By order dated October 27, 2016, the General Counsel ordered that this case be processed in Region 6 as though it were originally filed in Region 4 and then immediately transferred to Region 6 by the General Counsel. Contrary to the Employer, we find that it was appropriate and within the General Counsel's authority to order that the case be processed in this manner, and dismissal of the petition in these circumstances was unwarranted. *NLRB v. Superior Cable Corp.*, 246 F.2d 539, 540 (4th Cir. 1957) (per curiam) (it would be a "senseless technicality" to require dismissal of a petition, where "the defect in the petition could be cured and was cured"); *Bellagio, LLC v. NLRB*, 863 F.3d 839, 846-847 (D.C. Cir. 2017) (non-compliant petition did not require dismissal where violation was cured without prejudice to employers). See also *International Shoe Co.*, 93 NLRB 331, 332 (1951) (finding the General Counsel could cure a defective filing by transferring the petition to the correct Region).

Employer Objection 9 alleges that the Petitioner engaged in objectionable conduct by offering to turn over authorization cards if it lost the election. The Regional Director affirmed the hearing officer's finding that the Petitioner's offer in the pre-election hearing to demonstrate its showing of interest by disclosing signed authorization cards was neither sufficiently serious nor sufficiently disseminated to unit employees to call into question the validity of the election,

PHILIP A. MISCIMARRA,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

Dated, Washington, D.C., September 19, 2017.

which the Petitioner won by a 23-vote margin. The Employer's request for review contends that the Regional Director's analysis of this objection failed to consider the Employer's argument that the coercive impact of the Petitioner's conduct was demonstrated by the Petitioner's objection to alleged interrogation of card signers during a prior campaign, as evidenced by Employer Exhibit 1, which the hearing officer did not admit into evidence. Even accepting, *arguendo*, that the Petitioner objected to the Employer's alleged interrogation of card signers and that the hearing officer should have admitted Employer Exhibit 1, we nevertheless agree that Objection 9 should be overruled for the reasons stated by the Regional Director.

Chairman Miscimarra notes that this case involves, in part, the Board's recently revised representation case procedures, with which he has expressed his disagreement. See 79 Fed.Reg. 74308, at 77430-74460 (Dec. 15, 2014) (dissenting views of Members Miscimarra and Johnson). While the Chairman continues to disagree with the revised Rule, the Employer did not timely raise the issue of the invalidity of the Election Rule or its application to the Regional Director. Accordingly, Chairman Miscimarra does not pass or reach any question regarding the consequences of the Rule's application to the instant case. See Board's Rules and Regulations, Sec. 102.67(d).